BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of: Opinion requested by John W. Witt, City Attorney of San Diego	No. 75-044 February 21, 1975

BY THE COMMISSION: We have been asked the following question by John W. Witt, the City Attorney of the City of San Diego:

> Are city governments included in the definition of "person" found in Section 82047 of the Act?
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> An answer to the foregoing question is necessary with respect to my duties and those of my clients under the Act.

We understand that the question has specific reference to the word "person" as it is used in Government Code Section 86108,[1] and this opinion is limited to a construction of that section.

Memoranda urging a negative answer to the question have been received from John W. Witt, City Attorney of San Diego, from John P. Fraser, representing the Association of California Water Agencies, from Jerald E. Wheat of the Los Angeles County Counsel's office and from David Beatty of the League of California Cities. A memorandum citing authorities but not urging a specific result was submitted by Chris Funk, formerly of the Commission's staff. A public hearing on the pending opinion request was conducted by the Commission on February 20, 1975.

CONCLUSION

Local government agencies are "persons" within the meaning of Section 86108, and local government agencies which employ lobbyists or which make payments to influence legislative or administrative action of two hundred fifty dollars ($250) or more in value in any month, unless all of the payments are of the type described in Section 82045(c), are required to file statements under Section 86109.

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[1] All references are to the Government Code unless otherwise noted.

ANALYSIS

I

Section 86108 requires the following "persons," subject to certain exceptions discussed below, to file periodic disclosure statements:

> (a) Any person who employs or contracts for the services of one or more lobbyists, whether independently or jointly with other persons; and
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> (b) Any person who directly or indirectly makes payments to influence legislative or administrative action of two hundred fifty dollars ($250) or more in value in any month,...

The question presently before the Commission is whether a local government agency[2] (specifically a city) which otherwise qualifies under Section 86108, is a "person" within the meaning of that section.

The word "person" is defined in Section 82047 as follows:

> "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

This definition is similar to other relatively recent definitions of "person" contained elsewhere in the California statutes. See, e.g., Labor Code Section 18; Government Code Section 17.[3] Although it may be debated whether local government agencies are "corporations"[4] or "organizations," it will be seen below that the courts generally have considered questions such as the one before us by analyzing the goals and intent of the statute as a whole, rather than by closely scrutinizing the components of whatever definition of "person" may be applicable. E.g., Ohio v. Helvering, 292 U.S. 360 (1934); Bing v. City of Duarte, 65 C.2d 627 (1967). We find nothing in the definition of "person" in Section 82047 which conclusively resolves the question before us.

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[2] See Section 82041.

[3] For example of older definitions of "person," see Civil Code Section 14; Penal Code Section 7.

[4] Cities are commonly referred to as "municipal corporations."

II

In a memorandum of points and authorities arguing that local government agencies are not "persons" under Section 86108, the Los Angeles County Counsel's Office has urged that since "person" and "local government agency" are both defined in the Political Reform Act, the two definitions must be mutually exclusive. The only case cited to support this assertion, Beaudry v. Valdez, 32 Cal. 269 (1867), holds merely that upon analysis the definitions contained in the particular statute then before the Court were intended to be mutually exclusive.

Manifestly, there can be no general rule that separately defined terms must be mutually exclusive, for it is common in statutes to define a generic term and then define other terms which represent specific instances of the first. For example, in the Political Reform Act, the term "public official" (Section 82048) does not exclude "agency official" (Section 82004), "elected state officer" (Section 82021), or "legislative official" (Section 82038). Nor has it been contended that "person" (Section 82047) excludes "business entity" (Section 82005). The question whether the terms "person" and "local government agency" are mutually exclusive is merely a restatement of the question before us, and must be answered by analysis of the Act in light of the relevant case law, not by mechanical application of old maxims of statutory interpretation of dubious validity.

III

In memoranda submitted to us it has been argued that "a public agency is generally not deemed to be included within the ambit of a general statute unless specifically mentioned," and specifically "that the word 'person' is never held to mean a governmental agency." A survey of the cases, however, will show that to the extent these principles were ever valid, they have long since become outmoded.

In the 19th century courts generally construed the word "person" to exclude the United States, e.g., United States v. Fox, 94 U.S. 315 (1876), because of the "familiar principle that the King is not bound by any act of Parliament unless he be named therein by special and particular words." Dollar Savings Bank v. United States, 86 U.S. 227 (1873). Even then, the doctrine was regarded as a "rule of construction" and was not always followed. Green v. United States, 76 U.S. 653 (1869).

The doctrine was followed in the California courts, not only with respect to the state but also local government units,

e.g., Whittaker v. Tuolumne County, 96 Cal. 100 (1892); In re Miller's Estate, 5 Cal.2d 588 (1936). In most cases, however, the courts after reciting the doctrine made a determination that the specific statute in question was not intended to be applicable to government agencies. E.g., Barton v. All Persons, 176 Cal. 610 (1917); Courtney v. Byram, 54 C.A.2d 769 (1942).

In 1941, however, the California Supreme Court ruled that a statute authorizing the State Department of Public Works to require any "person" to relocate a pipeline to permit construction of a state highway could be used against a municipal water district. State of California v. Marin Municipal Water District, 17 Cal.2d 699 (1941). The Court said:

> It is a well established doctrine that general words in a statute will not be construed to limit the otherwise valid power of the state or its subdivisions unless that result was specifically intended by the legislature.
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> Id. at 704. (Emphasis added.)

The following year the Court undercut the old doctrine even more explicitly in Hoyt v. Bd. of Civil Service Commissioners, 21 Cal.2d 399 (1942). In that case the Court overruled Bayshore Sanitary District v. San Mateo Co., 48 C.A.2d 337 (1941), and other lower court decisions, by holding that declaratory judgments could be sought against government agencies.

> In the Bayshore case,...after noting that the statute authorizes the bringing of such an action by one "person" against "another" person, the court relied upon a general doctrine of statutory construction in concluding that the word "person" should not be held to include any political subdivision of the state in the absence of an express indication that such was the legislative intent. This general rule of statutory construction, which is supported by numerous cases, is founded upon the principle that statutory language should not be interpreted to apply to agencies of government, in the absence of a specific expression of legislative intent, where the result of such a construction would be to infringe sovereign governmental powers.... Where, however, no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to

> exist and the Legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general, statutory language only.

21 C.2d at 402. (Emphasis added.)

In Hoyt, the Court indicated that there was no longer even a "rule of construction" with respect to the inclusion of governments in statutes using the word "person," unless the statute would infringe on the "sovereignty" of the governmental unit. Since the Hoyt decision the California courts have generally interpreted statutes applicable to "persons" on a case-by-case basis, taking into consideration the purposes of the statute and any other indicia of legislative intent. In Nutter v. City of Santa Monica, 74 C.A. 2d 292 (1946), the Court found no legislative intent to include governments in a general collective bargaining statute, saying:

> Where a statute is not expressly made applicable to government, it is for the courts to determine whether the Legislature intended it to apply to government. In making that determination, it is proper to consider all matters which, under the rules of statutory interpretation, shed light upon the legislative intention. It is well established that general terms of a statute will not be construed as including government if the statute would operate to trench upon sovereign rights, injuriously affect the capacity to perform state functions or establish a right of action against the state.

Id. at 300.

In numerous subsequent decisions the courts have construed general statutes to apply to governments in accord with the principles of State v. Marin Mun. Water Dist., 17 C.2d 699 (1941), and Hoyt v. Bd. of Civil Services Commissioners, 21 C.2d 399 (1942). The state has been held a "person" able to bring actions for damages under the Unfair Practices Act, People v. Centr-O-Mart, 34 C.2d 702 (1950); an irrigation district has been held a "person" subject to suit under a quo warranto statute, San Ysidro Irrigation District v. Superior Court, 56 C.2d 708 (1961); the state has been held a "person" subject to suit in wrongful death actions, Flournoy v. State, 57 C.2d 497 (1962); and the state has been held a "person" placed on notice by recordation of contracts, Bing v. City of Duarte, 65 C.2d 627 (1967).

The foregoing developments have been paralleled at the federal level. In Ohio v. Helvering, 292 U.S. 360 (1934), an excise tax imposed on "persons" who sold alcoholic beverages was held applicable to a state-owned liquor monopoly. The Court said:

> Whether the word "person" or "corporation" includes a state or the United States depends upon the connection in which the word is found.
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> 292 U.S. at 370.

In United States v. California, 297 U.S. 175 (1936), the Court ruled that a state which operated a railroad was subject to the federal Safety Appliance Act. Referring to the old doctrine that a general statute is not applicable to the sovereign, the Court said:

> The presumption is an aid to consistent construction of statutes of the enacting sovereign when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated.... Language and objectives so plain are not to be thwarted by resort to a rule of construction whose purpose is but to resolve doubts, and whose application in the circumstances would be highly artificial.
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> 297 U.S. at 186-187.

In United States v. Cooper Corp., 312 U.S. 600 (1941), and Georgia v. Evans, 316 U.S. 159 (1942), the Court considered Section 7 of the Sherman Act, which permits an aggrieved "person" to seek treble damages for antitrust violations. In Cooper, the question raised was whether the United States was a "person" who could seek damages. After noting the old doctrine, the Court said:

> The purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an intent, by the use of the term ["person"], to bring state or nation within the scope of the law.
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> 312 U.S. at 605.

The Court ruled that the use of the word "person" was not in itself evidence of intent to include the United States, and other

tests indicated a contrary intent. In Georgia v. Evans, however, the Court ruled that a state was a "person" able to seek treble damages under the Sherman Act. The Court applied essentially the same test as in Cooper, saying

> Whether the word "person" or "corporation" includes a State or the United States depends upon its legislative environment.
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> 316 U.S. at 161.

In analyzing the "legislative environment" of the word "person" in the Sherman Act, the Court found that the considerations which had led to the exclusion of the United States in Cooper were not present in the case of the states.

These federal cases, while not binding for interpretation of a California statute, are worthy of consideration, particularly since their thrust is similar to the California decisions, and they have been cited approvingly by the California courts, e.g., Hoyt v. Bd. of Civil Service Commissioners, 21 C.2d 399, 405 (1942).

From the foregoing survey of cases, it may be concluded that the use of the word "person" in Section 86108 does not, in itself, dictate the inclusion or exclusion of local government agencies from its coverage. There may be a presumption of exclusion if inclusion would "trench upon sovereign rights, injuriously affect the capacity to perform state functions or establish a right of action" against the agency, Ritter v. City of Santa Monica, 74 C.A.2d 292, 300 (1946). In any event, the decision must finally turn on legislative intent, as it may be gleaned from the language and purposes of the statute.

IV

"Persons" who qualify under Section 86108 are not in any manner prohibited from communicating with state officials or attempting to influence legislative or administrative action. "Lobbyists" under the Political Reform Act are prohibited from certain activities by Sections 86202, 86203, and 86205, but neither these nor any other substantive regulations are imposed on persons qualifying under Section 86108. The only provisions affecting such persons are those requiring disclosure of expenditures and other information relative to lobbying activities. Such disclosure is not in any respect an infringement on the "sovereign rights" of local government agencies; nor does it injuriously affect the capacity of such agencies to perform their public functions, or establish a right of action against such agencies. Accordingly, under the case law previously

surveyed, we do not believe there is any presumption that local government agencies are either included or excluded. Even if there is a presumption of exclusion, however, we believe that for the following reasons the intent to include such agencies as "persons" in Section 86108 is clear enough to override the presumption.

We need not consider what the result would be if Chapter 6 of the Act, relating to lobbyists, were silent with respect to local government agencies. To the contrary, the Act makes it clear beyond doubt that local government is generally within the coverage of the lobbyist regulations. This is accomplished in Section 86300(a), which excludes from coverage:

> Any elected public official acting in his official capacity, or any employee of the State of California acting within the scope of his employment.

By excluding all state employees but only elected local officials, the Act unmistakably includes non-elected local officials. It is clear, then, that non-elected local officials who qualify under the definition of "lobbyist," see Section 82039, must file disclosure statements under Section 86107.

The disclosure provisions applicable to lobbyists (Section 86107) and to employers of lobbyists (Section 86109) are closely related. For example, salary, fees, and reimbursements are reported by the lobbyist who receives them under Section 86107(a) and by the employer who makes them under Section 86109(h). Expenditures for lobbying purposes are reported by the lobbyist if he incurs them (Sections 86106 and 86107(b)), and otherwise by the employer (Section 86109(c)). A citizen seeking to obtain a complete picture of a given lobbying operation must examine together the lobbyist's statement and the employer's statement. For these reasons, the fact that the lobbyists employed by local government agencies must file disclosure statements creates a stong inference that statements must be filed by the agencies which employ them. One purpose of disclosure by lobbyists and their employers, as well as by others who spend large sums to influence legislative or administrative action, is to inform the public of the resources being spent to influence government. To partially exclude local government from coverage would significantly detract from this purpose. Although the lobbyist employed by a city would have to report expenses he incurs directly, there would be no reporting of the possibly larger sums spent by the city for the lobbyist's

support. Expenditures to influence legislative or administrative action by a city which employs no lobbyists would go totally unreported.

It is no answer to say that expenditures by local government are already matters of public record. Unless local government agencies file the disclosure statements under the Political Reform Act it will be difficult or impossible for the ordinary citizen to obtain a timely, separate and comprehensive accounting of the moneys spent by local government for lobbying purposes.

These considerations are confirmed by the specific statement in Section 86108 that its coverage is subject to the exceptions in Section 86300. We believe this is a clear statement of intent that the only limitations on Section 86108 should be those expressed in Section 86300. With respect to governments, Section 86300 contains a total exclusion for state government, but for local government only a limited exclusion for elected officials. We conclude that local government agencies are "persons" within the meaning of Section 86108, and that local government agencies which employ lobbyists or which make payments to influence legislative or administrative action of $250 or more in value in any month, unless all of the payments are of the type described in Section 82045(c), are required to file statements under Section 86109. We intimate no views as to whether payments which are made in connection with the activities of an elected public official acting in his official capacity need not be considered, however, for purposes of Section 86108, by reason of the exemption contained in Section 86300.

Approved by the Commission on February 21, 1975. Concurring: Lowenstein, Miller, Waldie, Waters. Commissioner Carpenter did not participate in the deliberations or adoption of this opinion.

Daniel H. Lowenstein
Chairman